



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Mar 02 2021**

March 1, 2021

## STATE CLEARINGHOUSE

Mr. Brent Cooper  
City of American Canyon  
4381 Broadway Street, Suite 201  
American Canyon, CA 94503  
[bcooper@cityofamericancanyon.org](mailto:bcooper@cityofamericancanyon.org)

Subject: Oat Hill Multi-Family Project, Mitigated Negative Declaration,  
SCH No. 2021020107, Napa County

Dear Mr. Cooper:

The California Department of Fish and Wildlife (CDFW) reviewed the Mitigated Negative Declaration (MND) for the Oat Hill Multi-Family Project (Project) and is submitting the following comments on the MND to inform the City of American Canyon, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, Native Plant Protection Act Permit, Lake and Streambed Alteration (LSA) Agreement, and other provisions of the Fish and Game Code that afford protection to California's (State's) fish and wildlife trust resources.

### PROJECT DESCRIPTION

The proposed Project would develop 291 multi-family residential units on two parcels (Parcels A and B) totaling approximately 20.8 acres. Parcel A would consist of 206 multi-family residential units, a community loop trail, recreation building, outdoor seating area, and a pool. Parcel B would consist of 85 multi-family residential units, a recreation building, a tot lot, and an outdoor lounge and viewing area. Primary access to the site would be provided from an extension of the Napa Junction Road, which would connect to the site through two new driveways.

### PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project site is located immediately southwest of the intersection of Napa Junction Road and Hess Road in the City of American Canyon, Napa County. Approximate Project center coordinates are 38.18418° N, 122.26152° W; and the Assessor's Parcel

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Numbers are 058-380-008 and 058-320-001. The Project site is undeveloped and consists of annual grassland habitat with some shrubs and trees, including eucalyptus and pine. Elevations range from 80 to 185 feet above mean sea level. Surrounding land consists of annual grassland habitat to the south and west, industrial businesses and recreational vehicle storage to the north, a light industrial building to the northwest, Napa Junction Magnet Elementary School to the northeast, and single-family residences to the east.

## COMMENTS AND RECOMMENDATIONS

### Swainson's hawk (*Buteo swainsoni*)

CDFW is concerned with Mitigation Measures IV-1 and IV-2, and recommends the following revisions to reduce potential impacts to Swainson's hawk, a CESA listed as threatened species, to less-than-significant (added language in ***bold italics***, deleted language in ~~strikethrough~~):

*IV-1. Prior to project initiation, pre-construction surveys shall be conducted by a **qualified biologist** within a ~~quarter~~**0.5-mile** radius around all project activities, including on-site and off-site work, and shall be completed for at least two survey periods **prior to starting Project activities**. The survey period timing and methodology shall be conducted in accordance with ~~CDFW's~~ **the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000CDFG 4994)**, which identifies different survey windows throughout the pre-nesting and nesting season (ranging from January 1 through July 30/post-fledging) that have different survey methodologies and requirements. A letter report summarizing the survey results shall be submitted to **CDFW for review and written acceptance prior to starting Project activities. The survey results shall also be submitted to the Community Development Department within 30 days following the final survey.** If active Swainson's hawk nests are not identified on or within ~~0.25~~ **0.5-mile** of the project site within the survey periods, further avoidance and minimization measures for Swainson's hawk nesting habitat are not required.*

*IV-2. If Swainson's hawks are found to be nesting on the project site or within ~~0.25~~ **0.5-mile** of the project site, **the project proponent shall either, a) delay project activities until all Swainson's hawk nests within 0.5 miles of the Project site are no longer active, as determined by a qualified biologist, b) determine if the 0.5-mile buffer zone may be reduced in consultation with CDFW based on site-specific conditions, or c) if take cannot be avoided, obtain a CESA Incidental Take Permit from CDFW prior to starting project activities** ~~consultation with CDFW shall be required. The size of the nest protection buffer shall be determined~~*

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~~during consultation with CDFW, but at a minimum, shall be a 300-foot non-disturbance buffer around the nest site.~~

### **Western burrowing owl (*Athene cunicularia*)**

Mitigation Measure IV-3 in the MND would not reduce potential impacts to burrowing owl, a California Species of Special Concern, to less-than-significant because conducting a single survey within 14 days of the start of Project activities would be unlikely to detect burrowing owls. Burrowing owls may use the Project site and adjacent habitat for foraging, overwintering, and/or nesting habitat.

CDFW recommends that Mitigation Measure IV-3 be revised as follows (added language in **bold italics**, deleted language in strikethrough):

*IV-3. Prior to initiation of ground disturbance, a **qualified biologist shall conduct nesting and/or wintering owl surveys, as appropriate, in accordance with the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>)**. **Surveys shall encompass the project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections.** ~~pre-construction survey shall be performed within 14 days of construction activities. The pre-construction survey shall occur regardless of the time of year, as burrowing owls may use the project site during the non-nesting season. The survey shall be performed according to the standards set forth by the Staff Report for Burrowing Owl Mitigation (CDFW 2012).~~ A letter report summarizing the survey results shall be submitted to the Community Development Department within 30 days following the pre-construction survey. If burrowing owls are not present on-site **or adjacent to the site where they may be disturbed** during pre-construction surveys, further avoidance and minimization measures for burrowing owl nesting **and wintering** habitat are not required.*

Mitigation Measure IV-4 would not reduce impacts to a less-than-significant impact because passive relocation is not an adequate avoidance, minimization, and mitigation measure. CDFW recommends that Mitigation Measure IV-4 be revised as follows (added language in **bold italics**, deleted language in strikethrough):

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~~IV-4. If occupied burrows are encountered on site, the species shall not be disturbed during the nesting season (February 1 through August 31) until juveniles from the occupied burrows are foraging independently and capable of independent survival.~~

~~If occupied burrows are encountered on site during the non-nesting season (1 September to 31 January), and owls must be moved away from the disturbance area, passive relocation techniques shall be used rather than trapping, according to the standards set forth by the Staff Report for Burrowing Owl Mitigation (CDFW 2012). Burrow exclusion is a technique of installing one-way doors in burrow openings during the non-breeding season to temporarily exclude burrowing owls, or permanently exclude burrowing owls and close burrows after verifying burrows are vacant. At least 1 week shall be allowed to verify that the burrows are vacant and allow the owls to acclimate to alternate burrows. Burrowing owls shall not be excluded from burrows unless a Burrowing Owl Exclusion Plan is developed and approved by the applicable local CDFW office.~~ **burrowing owls are detected on or adjacent to the site where they may be disturbed, the following restricted activity dates and setback distances recommended per CDFW's Staff Report (2012) shall be implemented, unless reduced buffers are accepted by CDFW in writing based on site specific conditions:**

- **From April 1 through October 15, low disturbance and medium disturbance activities shall have a 200-meter buffer while high disturbance activities shall have a 500-meter buffer from occupied nests and wintering sites.**
- **From October 16 through March 31, low disturbance activities shall have a 50-meter buffer, medium disturbance activities shall have a 100-meter buffer, and high disturbance activities shall have a 500-meter buffer from occupied nests and wintering sites.**
- **No earth-moving activities or other disturbance should occur within the aforementioned buffer zones of occupied burrows. These buffer zones shall be marked with high visibility fencing or flagging.**

**If burrowing owls are present outside of the nesting season, burrowing owls may be passively relocated from the project site and adjacent habitat using CDFW-accepted methods so that construction can proceed. Any required passive relocation of burrowing owls would require CDFW acceptance. If passive relocation of burrowing owls is necessary, a qualified biologist shall prepare a Relocation Plan, including compensatory habitat as described below, for CDFW review and acceptance prior to the start of construction activities.**

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***If the survey determines that the project site is actively being used by burrowing owl, or any owls are passively relocated as described above, then compensatory habitat mitigation shall be provided. The habitat mitigation/compensation plan shall be submitted to CDFW for review and approval prior to the start of project activities. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan. If burrowing owls are observed during surveys, notification shall also be submitted to the California Natural Diversity Database (CNDDDB; see <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>).***

### **Nesting Birds and Raptors**

Mitigation Measure IV-5 would not reduce impacts to a level of less-than-significant because migratory birds and raptors could nest on the site prior to March 1. Furthermore, the survey should be conducted as close to the start of Project activities as possible, to avoid having birds and/or raptors nest on the Project site between the survey and start of work. CDFW recommends that Mitigation Measure IV-5 be revised as follows (added language in **bold italics**, deleted language in ~~strike through~~):

*IV-5. If project activities must be conducted during the nesting season (~~March~~ **February 15** and September 1), a pre-construction nesting bird survey shall be conducted by a qualified biologist within ~~744~~ days of vegetation removal or initial ground disturbance. The survey shall include the project site, any off-site disturbance areas, and **within a minimum 500 feet of all Project areas, surrounding vicinity** to identify the location and status of any nests that could potentially be affected either directly or indirectly by project activities. A letter report summarizing the survey results shall be submitted to the Community Development Department within 30 days following the pre-construction survey. If nesting birds are not present on-site **or within a minimum of 500 feet** during pre-construction surveys, further avoidance and minimization measures for nesting bird habitat are not required.*

*If active nests of ~~native~~ nesting bird species are identified during the nesting bird survey, a work exclusion zone shall be established around each nest by the qualified biologist. Established exclusion zones shall remain in place until all young in the nest have fledged or the nest otherwise becomes inactive (e.g., due to predation). Appropriate exclusion zone sizes shall be determined by a qualified biologist. **The qualified biologist shall be on site daily for the first week during Project activities, and then weekly thereafter until the nest is no longer active, to observe all active bird and raptor nests and to ensure that Project activities do not cause nest disturbance. If the qualified biologist observes birds and/or***

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***raptors displaying potential nest disturbance behavior, the qualified biologist shall cease work and consult with CDFW before resuming Project activities. In this event, Project activities shall not resume without CDFW's written permission.*** ~~and shall vary based on species, nest location, existing visual buffers, noise levels, and other factors. An exclusion zone radius may be as small as 50 feet for common, disturbance-adapted species, or as large as 250 feet or more for raptors. The exclusion zone size shall be reduced from established levels by a qualified biologist if nest monitoring findings indicate that project activities do not adversely impact the nest, and if a reduced exclusion zone would not adversely affect the nest.~~

## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CDFW appreciates the opportunity to provide comments on the MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at [Garrett.Allen@wildlife.ca.gov](mailto:Garrett.Allen@wildlife.ca.gov); or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse No. 2021020107